

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

MAY 26 2009

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

S.C. SUPREME COURT

South Carolina Association Of School Administrators . . . . . Petitioner,

v.

The Honorable Mark Sanford, in His Official Capacity  
as the Governor of the State of South Carolina; and The  
Honorable Jim Rex, in His Official Capacity as the State  
Superintendent of Education of South Carolina . . . . . Respondents.

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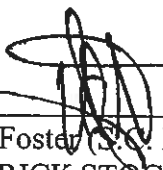
**NOTICE TO STATE COURT OF REMOVAL OF CIVIL ACTION**

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Pursuant to 28 U.S.C. § 1446(d), Respondent Governor Mark Sanford, by  
counsel, hereby provides notice to the Clerk of Supreme Court of South Carolina and to  
all interested parties that:

1. The above-captioned civil action has been removed to the United States  
District Court for the District of South Carolina, Columbia Division.
2. On May 26, 2009, a Notice of Removal was filed in the office of the Clerk  
of the United States District Court for the District of South Carolina. A copy of the  
Notice of Removal is attached hereto as Exhibit A.
3. Pursuant to 28 U.S.C. § 1446(d), no further proceedings may be held in  
this Court unless and until the case is remanded.

Respectfully submitted, this the 26th day of May, 2009



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John W. Foster (S.C. Bar No. 2087)  
KILPATRICK STOCKTON LLP  
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Columbia, SC 29201  
Telephone: (803) 744-3400

*Counsel for Governor Mark Sanford*

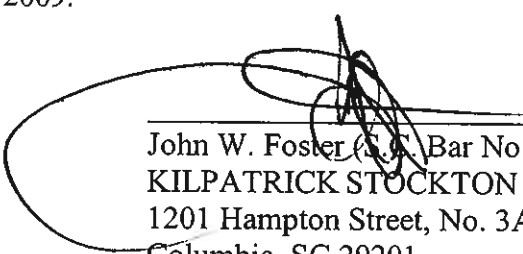
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Notice to State Court of Removal of Civil Action was served upon the following by hand-delivery:

Kenneth L. Childs  
William F. Halligan  
John M. Reagle  
Keith R. Powell  
The Tower at 1301 Gervais Street, Suite 900  
Columbia, SC 29211-1367

The Honorable Jim Rex  
South Carolina Superintendent of Education  
1429 Senate Street  
Columbia, SC 29201

This the 26th day of May, 2009.



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*Counsel for Governor Mark Sanford*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION  
Civil Action No. \_\_\_\_\_

SOUTH CAROLINA ASSOCIATION OF  
SCHOOL ADMINISTRATORS,

Plaintiff,

v.

THE HONORABLE MARK SANFORD,  
in his official capacity as the Governor of  
the State of South Carolina; and THE  
HONORABLE JIM REX, in his official  
capacity as the State Superintendent of  
Education of South Carolina,

**NOTICE OF REMOVAL**  
**OF CIVIL ACTION**

Defendants.

TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH  
CAROLINA:

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Mark Sanford, Governor of South Carolina in his official capacity ("Governor Sanford"), by and through counsel, hereby files this Notice of Removal of this action from the Supreme Court of South Carolina, where this action is now pending in that Court's original jurisdiction, to the United States District Court for the District of South Carolina, Columbia Division. In support of this Notice of Removal, Governor Sanford shows the Court as follows:

1. On or about May 22, 2009, Plaintiff South Carolina Association of School Administrators filed a Petition for Original Jurisdiction in the Supreme Court of South Carolina entitled *South Carolina Association of School Administrators v. The Honorable Mark Sanford, in His Official Capacity as the Governor of the State of South Carolina; and The Honorable Jim Rex,*

*in His Official Capacity as the State Superintendent of Education of South Carolina.* A copy of Plaintiff's Complaint was attached to the Petition.

2. This Notice of Removal is filed with this Court within 30 days after Governor Sanford's receipt of the Complaint, pursuant to 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a).

3. In the Complaint, Plaintiff asks the Court to interpret and apply federal law and therefore states a claim arising under federal law. Specifically, the Complaint alleges (*inter alia*) that (1) the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115 (2009), does not preempt Part III, Section 1 of the General Appropriations Law, H. 3560, 118th Sess., which was recently enacted by the General Assembly of South Carolina over Governor Sanford's veto (*see* Complaint ¶ 22), and (2) if ARRA is interpreted to preempt Part III, Section 1 of the General Appropriations Law, ARRA to that extent violates the United States Constitution as interpreted in *Printz v. United States*, 521 U.S. 898 (1997) (*see* Complaint ¶ 22.). The Complaint also asks for a declaration of Governor Sanford's obligations under state law.

4. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. In addition, this Court has supplemental jurisdiction over any state-law claims pursuant to 28 U.S.C. § 1367.

5. Accordingly, this action is removable pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

6. The state court in which this action was commenced is within this Court's district and division.

7. Copies of all process, pleadings, and orders received by Governor Sanford are attached hereto as Exhibit 1 – 4.

8. A copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of South Carolina and served on all adverse parties, as required by 28 U.S.C. § 1446(d).

9. The consent of Defendant Jim Rex (“Superintendent Rex”) is not required for removal of this action. As alleged in the Complaint, Superintendent Rex is adverse to Governor Sanford in this action. *See* Complaint ¶ 19 (“Defendant State Superintendent has been harmed, and will continue to be harmed, by the failure of the Governor to comply with the directives of the General Assembly in Part III of the State Budget [the General Appropriations Law]. The Governor’s failure to act impairs the State Superintendent’s performance of his official powers and duties . . . .”). Superintendent Rex also has made clear in public statements that he disagrees with Governor Sanford’s actions and interpretations of the law. *See* Associated Press, *S.C. Governor Mark Sanford Sues Over \$700M in Stimulus Money* (May 21, 2009), available at <http://www.abcnews.go.com/Politics/story?id=7643907&page=1>. *See also* Jim Rex Press Release, <http://ed.sc.gov/news/more.cfm?articleID=1158>. Because Superintendent Rex is adverse to Governor Sanford in this action, the Court should realign Superintendent Rex as a plaintiff and the case is removable without his consent. *See U.S. Fid. & Guar. Co. v. A & S Mfg. Co.*, 48 F.3d 131, 133 (4th Cir. 1995) (“It is our duty, as it is that of the lower federal courts, to look beyond the pleadings and arrange the parties according to their sides in the dispute. . . . [T]he court should align the parties according to their positions with respect to the primary issue [in controversy].”); *Beaufort County School Dist. v. United Nat. Ins. Co.*, 519 F. Supp. 2d 609, 616 (D.S.C. 2007).

10. By filing this Notice of Removal, Governor Sanford does not waive and hereby expressly reserves the right to assert any defenses available to him.

WHEREFORE, Defendant Mark Sanford, Governor of South Carolina, respectfully gives notice of the removal of this action to this Court.

Respectfully submitted, this the 26th day of May, 2009.

Respectfully submitted,

s/ John W. Foster

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*Counsel for Plaintiff Governor Mark Sanford*

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